UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION

LIN TELEVISION CORPORATION
d/b/a WIVB-TV/WNLO-TV

and **Case 03-CA-129811**

NATIONAL ASSOCIATION OF
BROADCAST EMPLOYEES AND
TECHNICIANS-COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO

STATEMENT OF POSITION TO ADMINISTRATIVE LAW JUDGE

I. Background

The charge in Case 03-CA-129811 was filed on June 2, 2014 by National Association of Broadcast Employees and Technicians-Communications Workers of America, AFL-CIO (Union), and alleged that LIN Television Corporation d/b/a WIVB-TV/WNLO-TV (Respondent) violated Section 8(a)(1), (3) and (5) of the Act. On August 28, 2014, the Regional Director partially deferred several of the allegations in the charge to the parties' grievance/arbitration procedures pursuant to *Dubo Manufacturing Corporation*, 142 NLRB 431 (1963).

A Complaint and Notice of Hearing issued on September 25, 2014, alleging that Respondent violated Section 8(a)(1) of the Act by threatening and admonishing employees for engaging in protected representational activities, directing an employee to keep his performance evaluation confidential, threatening to discharge an employee because the Union filed a grievance, and threatening an employee with unspecified reprisals and a negative performance appraisal for defending a grievance. Respondent filed an Answer to the Complaint and Notice of

Hearing on October 6, 2014. Orders Rescheduling Hearing issued on October 16 and November 4, 2014, respectively.

Administrative Law Judge Mindy Landow opened the record telephonically on December 2, 2014. On that date, ALJ Landow approved a unilateral settlement agreement proffered by Respondent over the objections of both the Union and Counsel for the General Counsel. Thereafter, the Union filed a Request for Special Permission to Appeal the ALJ's ruling approving the settlement agreement. In *LIN Television Corporation d/b/a WIVB-TV/WNLO-TV,* 362 NLRB No. 197 (August 27, 2015), the Board granted the Union's motion, granted the appeal on the merits, set aside the unilateral settlement agreement, and remanded the matter to ALJ Landow for further action consistent with the Board's Order. On September 8, 2015, ALJ Landow directed the parties to submit statements of position as to the further processing of the matter and the issues to be considered therein. Although the parties have been attempting to reach a non-Board settlement, no such resolution has been achieved to date.

II. Counsel for the General Counsel's position

Counsel for the General Counsel agrees to settle the case if Respondent signs the Region's revised settlement agreement which is consistent with the Region's position stated on the record and the concerns noted by the Board. Consistent with the Board's Order, the Region proffered to Respondent a revised informal Board settlement agreement and Notice to Employees. (A copy of the Region's revised Settlement Agreement and Notice to Employees is attached as Exhibit A). The Board noted that:

> "in light of the Respondent's demonstrated efforts to avoid resolution of the deferred allegations, we find that the consent order's inclusion of the broad non-admission clause and the order's omission of the General Counsel's proffered notice language stating that the Respondent would not "attempt" to prevent, or "attempt" to interfere with, employees' exercise of their Section 7

> rights preclude a finding that the consent order meets the standards set forth in *Independent Stave*.

The revised settlement agreement includes the language that Respondent would not "attempt" to prevent or "attempt" to interfere with employees' exercise of their Section 7 rights. The settlement agreement also replaces the "broad" non-admissions clause with a standard non-admissions clause.

In addition to restoring the word "attempt" in the Notice language and replacing the broad non-admissions clause, the General Counsel's proffered settlement agreement also restores James Diavastes' name to the Notice language for the reasons stated on the record on December 2, 2014. Specifically, his name should be included so that employees who read the Notice will be informed that this employee was admonished for union activity in his performance evaluation. Diavastes was not named in the Complaint due to long standing policy not to give information that could identify a witness in a Section 8(a)(1) allegation, unless the allegation involves Section 8(a)(1)discrimination against an employee. In this case, however, Respondent made it clear to employees that Diavastes was admonished for union activity in his performance evaluation. Including his name in the Notice language would make it clear to employees that this behavior violated the National Labor Relations Act and was being remedied by the Notice posting. This is especially true here, where there are relatively few employees in the shop and employees are likely aware of Respondent's actions toward Diavastes, the shop steward. Including his name in the Notice language would more forcefully connect Respondent's alleged unlawful conduct with the remedy.

Finally, Counsel for the General Counsel seeks the standard default language included in all informal settlement agreements. As Counsel for the General Counsel stated on the record, Agency policy requires a noncompliant Respondent to admit to the allegations of the complaint

where settlement is affected after complaint issues. Instead, the parties would only litigate Respondent's failure to comply with the settlement agreement. Without the default language stating that the allegations of the Complaint are deemed admitted, in a case of noncompliance, the Region would have to reissue the Complaint and litigate at a later date, leaving itself open to an argument from Respondent that the reissued Complaint was time-barred.

Thus, it is submitted that the Region's revised settlement agreement remedies the unfair labor practices alleged in the Complaint. It also addresses the concerns raised by the Board in its August 27, 2015 Order. Otherwise, if Respondent refuses to sign the revised informal Board settlement agreement, and if the parties do not work out a non-Board settlement, then this matter should proceed to hearing.

III. Conclusion

Counsel for the General Counsel respectfully submits that, for all the reasons set forth above, the only settlement agreement that will adequately remedy the unfair labor practices alleged in the Complaint is the revised settlement agreement attached as Exhibit A. If Respondent refuses to sign the settlement agreement, a new hearing date should be set and the case should be litigated, unless the parties reach an acceptable non-Board settlement agreement.

DATED at Buffalo, New York, this 29th day of September, 2015.

Respectfully submitted,

/s/ Alicia E. Pender
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